

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No.: EB-11-IH-0610
)	
Bay Springs Communications, Inc.)	Acct. No.: 201232080017
)	
)	FRN: 0015518269
)	

ORDER

Adopted: February 24, 2012**Released: February 24, 2012**

By the Acting Chief, Investigations and Hearings Division, Enforcement Bureau:

1. In this Order, we adopt a Consent Decree entered into between the Enforcement Bureau (Bureau) and Bay Springs Communications, Inc. (BSCI). The Consent Decree terminates an investigation by the Bureau against BSCI for possible violations of Sections 9(a)(1), 225, 251(e)(2), and 254(d) of the Communications Act of 1934, as amended (Act),¹ and Sections 1.1154, 1.1157, 43.61, 52.17, 52.32, 54.706, 54.711, 64.604, and 64.1195 of the Commission's rules (Rules)² concerning various regulatory fee and reporting obligations as well as required contributions to the Universal Service Fund, the Telecommunications Relay Service Fund, and the North American Numbering Plan and Local Number Portability administration. The Consent Decree also terminates an investigation by the Bureau into possible violations of Section 222 of the Act,³ Section 64.2009(e) of the Rules,⁴ and the Commission's *EPIC CPNI Order*⁵ regarding BSCI's customer proprietary network information obligations.

2. A copy of the Consent Decree negotiated by the Bureau and BSCI is attached hereto and incorporated herein by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether BSCI possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

¹ 47 U.S.C. §§ 159(a)(1), 225, 251(e)(2), 254(d).

² 47 C.F.R. §§ 1.1154, 1.1157, 43.61, 52.17, 52.32, 54.706, 54.711, 64.604, 64.1195.

³ 47 U.S.C. § 222.

⁴ 47 C.F.R. § 64.2009(e).

⁵ *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927, 6953 (2007) (*EPIC CPNI Order*); *aff'd sub nom. Nat'l Cable & Telecom. Assoc. v. FCC*, 555 F.3d 996 (D.C. Cir. 2009).

5. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i) and 503(b) of the Act,⁶ and Sections 0.111 and 0.311 of the Rules,⁷ the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Thomas J. Moorman, Woods & Aitken LLP, 2154 Wisconsin Ave., NW, Suite 200, Washington, DC 20007.

FEDERAL COMMUNICATIONS COMMISSION

Theresa Z. Cavanaugh
Acting Chief
Investigations and Hearings Division
Enforcement Bureau

⁶ 47 U.S.C. §§ 154(i), 503(b).

⁷ 47 C.F.R. §§ 0.111, 0.311.

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Bay Springs Communications, Inc.)	Acct. No.: 201232080017
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CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and Bay Springs Communications, Inc., by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau's investigation into whether BSCI violated Sections 9(a)(1), 225, 251(e)(2), and 254(d) of the Communications Act of 1934, as amended,¹ and Sections 1.1154, 1.1157, 43.61, 52.17, 52.32, 54.706, 54.711, 64.604, and 64.1195 of the Commission's rules,² concerning the following issues: (1) payment of annual regulatory fees; (2) filing of international telecommunications traffic reports; (3) contributions to the Universal Service Fund and Telecommunications Relay Services Fund; (4) contributions to the cost-recovery mechanisms for North American Numbering Plan and Local Number Portability administration; and (5) the reporting of information as set forth on the Telecommunications Reporting Worksheets. The Consent Decree also terminates an investigation by the Bureau for possible violations of Section 222 of the Act,³ Section 64.2009(e) of the Rules,⁴ and the Commission's *EPIC CPNI Order*,⁵ regarding BSCI's apparent failure to timely file compliant annual customer proprietary network information certifications pursuant to Section 64.2009(e).

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) "Adopting Order" means an Order of the Commission adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) "BSCI" means Bay Springs Communications, Inc. and its predecessors-in-interest and successors-in-interest.
 - (d) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.

¹ 47 U.S.C. §§ 159(a)(1), 225, 251(e)(2), 254(d).

² 47 C.F.R. §§ 1.1154, 1.1157, 43.61, 52.17, 52.32, 54.706, 54.711, 64.604, 64.1195.

³ 47 U.S.C. § 222.

⁴ 47 C.F.R. § 64.2009(e).

⁵ *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927, 6953 (2007) (*EPIC CPNI Order*); *aff'd sub nom. Nat'l Cable & Telecom. Assoc. v. FCC*, 555 F.3d 996 (D.C. Cir. 2009).

- (e) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
- (f) “Communications Laws” means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which BSCI is subject by virtue of its business activities.
- (g) “Company” means Bay Springs Communications, Inc. and its predecessors-in-interest and successors-in-interest.
- (h) “Compliance Plan” means the plan described in this Consent Decree at paragraph 17.
- (i) “Covered CPNI Employees” means all employees and agents of BSCI who perform, or supervise, oversee, or manage the performance of, duties that relate to BSCI’s responsibilities under the CPNI Rules.
- (j) “CPNI” means customer proprietary network information.
- (k) “CPNI Rules” means Section 222 of the Act, Section 64.2009(e) of the Rules, the *EPIC CPNI Order*, and other provisions of the Act, the Rules, and Commission orders governing a telecommunications carrier’s use of CPNI.
- (l) “Effective Date” means the date on which the Commission releases the Adopting Order.
- (m) “Federal Regulatory Reporting and Contribution Rules” means Sections 9, 225, 251(e)(2), and 254(d) of the Act,⁶ Sections 1.1154, 1.1157, 43.61, 52.17, 52.32, 54.706, 54.711, 64.604, and 64.1195 of the Rules,⁷ and other provisions of the Act, the Rules, and Commission orders governing federal regulatory reporting and contribution obligations.
- (n) “Investigation” means the investigation initiated by the Bureau in File No. EB-11-IH-0610 in response to BSCI’s voluntary disclosure regarding possible violations of Sections 9, 222, 225, 251(e)(2), and 254(d) of the Act,⁸ Sections 1.1154, 1.1157, 43.61, 52.17, 52.32, 54.706, 54.711, 64.604, 64.1195, and 64.2009(e) of the Rules,⁹ and the Commission’s *EPIC CPNI Order*.¹⁰
- (o) “LNP” means Local Number Portability.
- (p) “NANP” means the North American Numbering Plan.
- (q) “Parties” means Bay Springs Communications, Inc. and the Bureau, and each a “Party.”

⁶ 47 U.S.C. §§ 159, 225, 251(e)(2), 254(d).

⁷ 47 C.F.R. §§ 1.1154, 1.1157, 43.61, 52.17, 52.32, 54.706, 54.711, 64.604.

⁸ 47 U.S.C. §§ 159, 222, 225, 251(e)(2), 254(d).

⁹ 47 C.F.R. §§ 1.1154, 1.1157, 43.61, 52.17, 52.32, 54.706, 54.711, 64.604, 64.1195, 64.2009(e).

¹⁰ *EPIC CPNI Order*, 22 FCC Rcd 6927.

- (r) “Rules” means the Commission’s regulations found in Title 47 of the Federal Regulations.
- (s) “TRS” means Telecommunications Relay Services.
- (t) “USF” means the Universal Service Fund.

II. BACKGROUND

A. Federal Regulatory Reporting and Contribution Obligations

3. Pursuant to Section 254(d) of the Act and Sections 54.706 and 54.711 of the Rules, telecommunications service providers that provide interstate telecommunications services are required to file annual and quarterly Telecommunications Reporting Worksheets (FCC Form 499-A and FCC Form 499-Q) and contribute to the federal USF.¹¹ Pursuant to Section 64.1195 of Rules, interstate telecommunications carriers are required to file registration information on FCC Form 499-A.¹²

4. Pursuant to Section 225(b)(1) of the Act and Section 64.604 of the Rules, providers of interstate telecommunications services are required to contribute to the TRS Fund.¹³

5. Pursuant to Section 251(e) of the Act and Sections 52.17 and 52.32 of the Rules, telecommunications service providers are required to contribute to the costs of establishing numbering administration and local number portability.¹⁴

6. Pursuant to Section 9(a)(1) of the Act and Sections 1.1154 and 1.1157 of the Rules, interstate telecommunications carriers are required to pay regulatory fees.¹⁵

7. Pursuant to Section 43.61 of the Rules, common carriers engaged in providing international telecommunications service between the area comprising the continental United States, Alaska, Hawaii, and offshore U.S. points and any country or point outside that area are required to file reports of international telecommunications traffic.¹⁶

B. CPNI Obligations

8. Section 222 of the Act imposes the general duty on all telecommunications carriers to protect the confidentiality of their subscribers’ proprietary information.¹⁷ The Commission has issued

¹¹ See 47 U.S.C. § 254(d); 47 C.F.R. §§ 54.706, 54.711.

¹² See 47 C.F.R. § 64.1195.

¹³ See 47 U.S.C. § 225(b)(1); 47 C.F.R. § 64.604.

¹⁴ See 47 U.S.C. § 251(e); 47 C.F.R. §§ 52.17, 52.32.

¹⁵ 47 U.S.C. § 159(a)(1); 47 C.F.R. §§ 1.1154, 1.1157.

¹⁶ 47 C.F.R. § 43.61.

¹⁷ Section 222 of the Act, 47 U.S.C § 222, provides that: “Every telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, other telecommunications carriers, equipment manufacturers, and customers, including telecommunication carriers reselling telecommunications services provided by a telecommunications carrier.” Prior to the 1996 Act, the Commission had established CPNI requirements applicable to the enhanced services operations of AT&T, the Bell Operating Companies (BOCs), and GTE, and the customer premises equipment (CPE) operations of AT&T and the BOCs, in the Computer II, Computer III, GTE Open Network Architecture (ONA), and BOC CPE Relief proceedings. See *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information*

rules implementing Section 222 of the Act.¹⁸ The Commission requires carriers to establish and maintain a system designed to ensure that carriers adequately protect their subscribers' CPNI. Section 64.2009(e) of the Rules is one such requirement.

9. In 2006, some companies, known as "data brokers," advertised the availability of records of wireless subscribers' incoming and outgoing telephone calls for a fee.¹⁹ Data brokers also advertised the availability of certain landline toll calls.²⁰ On April 2, 2007, the Commission strengthened its privacy rules with the release of the *EPIC CPNI Order*, which adopted additional safeguards to protect CPNI against unauthorized access and disclosure.²¹ The *EPIC CPNI Order* was directly responsive to the actions of databrokers, or pretexters, to obtain unauthorized access to CPNI.²² The *EPIC CPNI Order* requires that all companies subject to the CPNI rules file annually, on or before March 1, a certification with the Commission pursuant to amended rule 47 C.F.R. § 64.2009(e).²³ Additionally, companies must now provide with their certification "an explanation of any actions taken against data brokers and a summary of all customer complaints received in the past year concerning the unauthorized release of CPNI."²⁴

C. Investigation

10. BSCI is a small competitive local exchange carrier based in Mississippi that offers interstate and international telecommunications services. BSCI began operations in November 2006 and is subject to the requirements discussed in paragraphs 3 through 9 above.

and Other Customer Information and Implementation of Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061, 8068-70 (1998) (*CPNI Order*) (describing the Commission's privacy protections for confidential customer information in place prior to the 1996 Act).

¹⁸ See *CPNI Order*. See also *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information and Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, Order on Reconsideration and Petitions for Forbearance, 14 FCC Rcd 14409 (1999); *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information and Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*; 2000 Biennial Regulatory Review—Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, Third Report and Order and Third Further Notice of Proposed Rulemaking, 17 FCC Rcd 14860 (2002); *EPIC CPNI Order*.

¹⁹ See, e.g., <http://www.epic.org/privacy/iei/>.

²⁰ See *id.*

²¹ See *EPIC CPNI Order*, 22 FCC Rcd 6927. Specifically, pursuant to Section 64.2009(e): A telecommunications carrier must have an officer, as an agent of the carrier, sign and file with the Commission a compliance certificate on an annual basis. The officer must state in the certification that he or she has personal knowledge that the company has established operating procedures that are adequate to ensure compliance with the rules in this subpart. The carrier must provide a statement accompanying the certification explaining how its operating procedures ensure that it is or is not in compliance with the rules in this subpart. In addition, the carrier must include an explanation of any actions taken against data brokers and a summary of all customer complaints received in the past year concerning the unauthorized release of CPNI. This filing must be made annually with the Enforcement Bureau on or before March 1 in EB Docket No. 06-36, for data pertaining to the previous calendar year. See 47 C.F.R. § 64.2009(e).

²² See *EPIC CPNI Order*, 22 FCC Rcd at 6928.

²³ See *id.* at 6953; 47 C.F.R. § 64.2009(e).

²⁴ *EPIC CPNI Order*, 22 FCC Rcd at 6953.

11. In March 2011, BSCI voluntarily disclosed to the Bureau potential violations of the Act and the Rules involving federal regulatory reporting, contribution, and CPNI obligations.

12. As of the Effective Date, BSCI has paid all invoiced amounts to the USF, TRS Fund, cost recovery mechanisms for NANP and LNP administration, and regulatory fees, as well as complied with the regulatory reporting and CPNI obligations discussed above. BSCI provided financial information documenting its inability to pay a large forfeiture.²⁵

III. TERMS OF AGREEMENT

13. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order.

14. **Jurisdiction.** BSCI agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

15. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau Order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission order.

16. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate its Investigation. In consideration for the termination of said Investigation, BSCI agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, the Bureau will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against BSCI concerning the matters that were the subjects of the Investigation. The Bureau also agrees that it will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against BSCI with respect to BSCI's basic qualifications, including its character qualifications, to be a Commission licensee or hold Commission authorizations.

17. **Compliance Plan.** For purposes of settling the matters set forth herein, BSCI agrees to implement a Compliance Plan related to future compliance with the Communications Laws. The Compliance Plan must include, at a minimum, the following components:

- (a) **Compliance Officer.** Within thirty (30) calendar days of the Effective Date, BSCI will designate a Compliance Officer who will administer the Compliance Plan, supervise BSCI's compliance with the Communications Laws, and serve as the point of contact on behalf of BSCI for all FCC-related compliance matters.
- (b) **Compliance Manual.** Within sixty (60) calendar days of the Effective Date, the Compliance Officer will develop and distribute a Compliance Manual to employees and others who perform duties at BSCI that trigger or may trigger compliance-related responsibilities. The Compliance Manual will include, at a minimum, an overview of the Federal Regulatory Reporting and Contribution Rules, including (i) the payment of

²⁵ See 47 U.S.C. § 503(b)(2)(E); 47 C.F.R. § 1.80(b)(6).

annual regulatory fees; (ii) contributions to the USF and TRS Fund; (iii) contributions to cost-recovery mechanisms for NANP and LNP administration; (iv) the submission of information as set forth on the Telecommunications Reporting Worksheets; and (v) the submission of international telecommunications traffic reports. The Compliance Manual will also set forth a schedule of filing and payment dates associated with these regulatory reporting and contribution obligations. BSCI will create compliance notifications that alert BSCI personnel to upcoming filing and payment dates. The Compliance Manual will require personnel to contact BSCI's Compliance Officer, and if appropriate, regulatory legal counsel, with any questions or concerns that arise with respect to BSCI's federal regulatory reporting and contribution obligations.

- (c) **Compliance Training Program.** Within ninety (90) calendar days after the Effective Date, and annually thereafter, BSCI shall implement and conduct a training program on compliance with the Federal Regulatory Reporting and Contribution Rules for all employees who perform duties at BSCI that trigger or may trigger compliance-related responsibilities. BSCI shall ensure that training and compliance materials are provided to new and reassigned employees who are responsible for fulfilling those obligations within the first thirty (30) calendar days of employment or reassignment.
- (d) **Review and Monitoring.** BSCI will review the Compliance Manual and Compliance Training Program at least annually to ensure that they are complete and otherwise properly maintained and continue to address BSCI's compliance with the Federal Regulatory Reporting and Contribution Rules, and will update the Compliance Manual and Compliance Training Program in the event of changes and/or additions to the relevant sections of the Communications Laws.
- (e) **CPNI Compliance Measures, Training, and Disciplinary Process.** BSCI agrees to take all measures necessary to achieve full compliance with the CPNI Rules. BSCI agrees that within thirty (30) calendar days after the Effective Date, Covered CPNI Employees shall be trained as to when they are and are not authorized to use CPNI. As part of the CPNI training, Covered CPNI Employees shall be advised of BSCI's obligation to report any non-compliance with the CPNI Rules under paragraph 17(f) of this Consent Decree and shall be instructed on how to disclose non-compliance to the Compliance Officer. BSCI further agrees to have an express disciplinary process in place for the unauthorized use of CPNI within thirty (30) calendar days after the Effective Date. Additionally, BSCI agrees to submit for each of three (3) years following the Effective Date of this Consent Decree a copy of its annual Section 64.2009(e) compliance certificate, which it is required to file annually in EB Docket 06-36, to the Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C244, Washington, D.C. 20554. BSCI must also send an electronic copy of its certification to other Telecommunications Consumers Division staff as directed by the Telecommunications Consumers Division Chief.
- (f) **Reporting Non-Compliance.** BSCI will report any non-compliance with this Consent Decree, the Federal Regulatory Reporting and Contribution Rules, the CPNI Rules, or related Commission orders to the Bureau within fifteen (15) days after the discovery of non-compliance.
- (g) **Compliance Reports.** BSCI will file compliance reports with the Commission ninety (90) days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and upon expiration of this Consent Decree,

three (3) years after the Effective Date. Each compliance report shall include a compliance certificate from the Compliance Officer, as an agent of BSCI, stating that the Compliance Officer has personal knowledge that BSCI: (i) has established operating procedures intended to ensure compliance with the terms and conditions of this Consent Decree, the Federal Regulatory Reporting and Contribution Rules, and the CPNI Rules, together with an accompanying statement explaining the basis for the Compliance Officer's certification; (ii) has been utilizing those procedures since the previous Compliance Report was submitted; and (iii) is not aware of any instances of non-compliance. The certification must comply with Section 1.16 of the Rules²⁶ and be subscribed to as true under penalty of perjury in substantially the form set forth therein. If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of BSCI, shall provide the Commission with a detailed explanation of: (i) any instances of non-compliance with this Consent Decree and the Rules, and (ii) the steps that BSCI has taken or will take to remedy each instance of non-compliance and ensure future compliance, and the schedule on which proposed remedial actions will be taken. All compliance reports shall be submitted to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-C330, 445 12th Street, S.W., Washington, D.C. 20554, with a copy submitted electronically to Terry Cavanaugh at Terry.Cavanaugh@fcc.gov, Pamela S. Kane at Pamela.Kane@fcc.gov, and Edward Smith at Edward.Smith@fcc.gov.

- (h) **Termination Date.** The requirements of this Compliance Plan shall expire thirty-six (36) months after the Effective Date, except that the requirements of paragraph 17(e) shall expire thirty-six (36) months after the Effective Date or upon the termination of the certification requirement set forth in Section 64.2009(e) of the Rules, whichever is earlier.

18. **Section 208 Complaints: Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to Section 208 of the Act²⁷ against BSCI or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by BSCI with the Communications Laws.

19. **Voluntary Contribution.** BSCI agrees that it will make a voluntary contribution to the United States Treasury in the amount of sixteen thousand dollars (\$16,000). The contribution will be made within thirty (30) calendar days after the Effective Date of the Adopting Order. The payment must be made by check or similar instrument, payable to the Order of the Federal Communications Commission. The payment must include the Account Number and FRN referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to the Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank Federal Reserve Bank of New York, and account number 27000001. For payments by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A

²⁶ See *id.* § 1.16.

²⁷ See 47 U.S.C. § 208.

(payment type code). BSCI will also send electronic notification to Terry Cavanaugh at Terry.Cavanaugh@fcc.gov, Pamela S. Kane at Pamela.Kane@fcc.gov, and Edward Smith at Edward.Smith@fcc.gov on the date said payment is made.

20. **Waivers.** BSCI waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Commission issues the Adopting Order adopting the Consent Decree without change, addition, modification, or deletion. BSCI shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither BSCI nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and BSCI shall waive any statutory right to a trial *de novo*. BSCI hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act,²⁸ relating to the matters addressed in this Consent Decree.

21. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

22. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which BSCI does not expressly consent) that provision will be superseded by such Commission rule or order.

23. **Successors and Assigns.** BSCI agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

24. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the parties. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Communications Laws.

25. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

26. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

27. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

²⁸ See 5 U.S.C. § 504; 47 C.F.R. Part 1, Subpart K.

28. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

Theresa Z. Cavanaugh
Acting Chief
Investigations and Hearings Division
Enforcement Bureau

Date

James Garner
Vice President of Operations
Bay Springs Communications, Inc.

Date